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February 20, 2004

VIA HAND DELIVERY

Mail Stop PGPUB-ABD
Commissioner for Patents
Crystal Park 3, Room 905
Arlington, VA 22202-3729

**RECEIVED
USPTO-PG PUBS**

FEB 20 2004

Re: U.S. Application No. 09/850,147
Filed: May 8, 2001
Title: Nucleic Acid Molecules and Other Molecules Associated
with Plants
Applicants: Scott E. ANDERSEN *et al.*
Atty. Docket: 16517.251

02/23/2004 KKing1 00000003 502387 09850147

Sir:

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The following documents are forwarded herewith for appropriate action by the U.S. Patent and Trademark Office (PTO):

1. a Petition for Express Abandonment Under 37 C.F.R. § 1.138(c) In Order to Avoid Publication; and
2. a return postcard.

Please stamp the attached postcard with the filing date of these documents and return it to our courier.

Applicants request that the following fee be charged to Deposit Account No. 50-2387 referencing docket number 16517.251:

\$ 130.00 petition fee

In the event that extensions of time beyond those petitioned for herewith are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned. Applicants do not believe any fees, other than the above fee (\$130), are due in conjunction with this filing. However, if any additional fees under 37 C.F.R. §§ 1.16 or 1.17 are required in the present application, including any fees for extensions of time, then the Commissioner is hereby authorized to charge such fees to Arnold & Porter Deposit Account No. 50-2387 referencing matter number 16517.251. A duplicate copy of this letter is enclosed.

OK FOR ABANDONMENT

FEB 23 2004

**PG PUB DIVISION
INITIALS BDD**

Respectfully submitted,



David R. Marsh (Reg. Attorney No. 41,408)
Holly Logue Prutz (Reg. Attorney No. 47,755)

Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Scott E. ANDERSEN *et al.*

Appln. No.: 09/850,147

Filed: May 8, 2001

For: Nucleic Acid Molecules and Other
Molecules Associated with Plants

Art Unit: 1631

Examiner: Lori A. CLOW

Confirmation No.: 1268

Atty. Docket: 16517.251

**Petition for Express Abandonment Under
37 C.F.R. § 1.138(c) In Order to Avoid Publication**

Mail Stop PGPUB-ABD
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition for express abandonment of U.S. Application Serial No. 09/850,147 under 37 C.F.R. § 1.138(c) as of the filing date granted to child Application Serial No. 10/767,701, filed January 29, 2004, naming David K. Kovalic, Yihua Zhou, and Yongwei Cao as inventors and having Attorney Docket No. 38-21(53535)B/US (the "Child Application"), for purposes of avoiding publication of the above-captioned U.S. application. Authorization to charge the official fees for this Petition is given in the accompanying transmittal letter. A duplicate copy of this Petition is enclosed.

On May 8, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention "has not and will not be the subject of an application filed in another

country, or under a multilateral agreement, that requires publication at eighteen months after filing.” (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to the invention disclosed in the above-captioned U.S. application, were subsequently filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on August 6, 2001 (the “Foreign Application”).¹

Applicants hereby petition for express abandonment of U.S. Application Serial No. 09/850,147 under 37 C.F.R. § 1.138(c) as of the filing date granted to the Child Application, for purposes of avoiding publication of the above-captioned U.S. application.²

The above-captioned U.S. application contains multiple sequences, only some of which may meet the criteria such that those sequences may be considered to be the “invention disclosed” within the meaning of 35 U.S.C. § 122. However, in lieu of submitting a redacted copy of the above-captioned U.S. application, provided for under 35 U.S.C. § 122 (b)(2)(B)(v), Applicants have elected to pursue the present course of action of refiling the less extensive Child Application, which contains only those sequences which may be disclosed in the Foreign Application without a request for non-publication.

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below. The undersigned is an attorney of record, or an attorney acting in a representative capacity for Applicants by virtue of being named in the transmittal papers accompanying the above-referenced child application, and therefore has

¹ Where more than one application was filed in another country or under a multilateral agreement, only the date for the earliest-filed foreign application is recited herein.

² In the papers filed on December 3, 2003, Applicants explicitly notified the Office of the filing of the Foreign Application on August 6, 2001, pursuant to 35 U.S.C. § 122 (b)(2)(B)(iii), rescinded the non-publication request, and petitioned for revival of the U.S. Application.

authority to petition for abandonment of the above-captioned U.S. application in favor of the above-referenced child application pursuant to 37 C.F.R. § 1.138(b), 1.33(b), and 1.34(a).

Respectfully submitted,

Lawrence M. Lavin, Jr.

Lawrence M. Lavin, Jr. (Reg. No. 30,768)
by Holly Logue Prutz (Reg. No. 47,755)

by Holly Logue Prutz

Date: February 20, 2004

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